

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF K. P.

R. P. AND C. P.,
Petitioners,

VS.

NO. 04-44

METROPOLITAN NASHVILLE PUBLIC
SCHOOLS,
Respondent.

BARBARA A. DEERE
Administrative Law Judge

MEMORANDUM OPINION AND FINAL ORDER

INTRODUCTION

This case came before the Tennessee Department of Education upon a Petition, filed by R. P. and C. P., the parents of K. P., a 6 year old child, who has the diagnosis of “autism”, as defined by the *Tennessee Rules, Regulations and Minimum Standards and the Administrative Policies and Procedures Manual of the Division of Special Education of the State Board of Education* ("APPM"), Rule 0520-1-9-01(15)(a). The Petition was heard upon Petitioners’ assertion that the School System’s placement of KP was inappropriate.

This DUE PROCESS hearing arose as a result of a failure to agree to the educational needs of the child involved, KP. An Individual Education Plan (IEP) team meeting convened in the spring of 2004 to prepare for KP’s IEP for the upcoming 2004-2005 school year; KP’s first grade year. Team members present for the 2004-2005 school year IEP included CP, Cynthia Leatherwood, Jennifer Virginia, Cheryl Minnis, Kathy Thompson, Kelly Ruth, Patricia Hatfill, Kathy Pier-Benton, Paulette Gentry, Donna Zeedar, Penny Franklin, Melinda Pennington and

Elizabeth Mitchell. The team drew a plan, including provisions for an Extended School Year (ESY) Plan, all of which the Petitioners, KP's parents, rejected. Petitioners filed this due process request on June 2, 2004. Subsequent to the assignment of Administrative Law Judge, both parties waived the 45 day time requirement. Petitioners alleged that Respondent, the Metropolitan Nashville School System, failed to provide a free, appropriate public education.

The hearing in the case opened on November 15, 2004 and continued on November 16, 19, 22, 23, and concluded on December 4, 2004. Witnesses included KP's mother, CP or Mom; Dr. Denise Dunzweiler, Professor at the Southern Adventist University in Ootewah, TN; Dr. Craig Kennedy, Director of the Vanderbilt University Behavior Analysis Clinic in Nashville, TN; Susan Cortner, first grade school teacher for Metropolitan Nashville School System (Metro) and KP's first grade school teacher at Una Elementary School (Una) in Nashville, TN; Kathy Thompson, Special Education Itinerant teacher for Metro and KP's kindergarten special education teacher; Kelly Ruth, Speech and Language Pathologist for Metro and KP's kindergarten speech therapist; Jennifer Haughey, Training Specialist, Judevine Center in St. Louis, Mo.; Janet Shouse, parent of a child with autism; Elizabeth Mitchell, parent of a child with autism; Marcy Rehse, Consultant, TN Autism Consulting and Therapy (TACT); Carol Garrett, Special Education teacher for Metro; Carrie Cruce, Speech and Language Pathologist, Metro; Lana Evans, Teacher's Assistant for Metro; Kathy Pire-Benton, Occupational Therapist for Metro; Patricia Hatfill, Kindergarten Teacher at Una with Metro; and Beth Urbanczyk, Speech and Language Pathologist and Behavior Specialist with Metro.

The witnesses could be grouped into three categories for the purpose of weighing the evidence during this hearing. CP, Janet Shouse and Elizabeth Mitchell are parents of children

with autism; each also have a degree of technical knowledge of children with autism. Dr. Denise Dunzweiler, Dr. Craig Kennedy and Jennifer Haughey made observations and assessments and rendered expert opinions regarding the educational needs of KP, based upon their brief, professional encounters with KP. Susan Cortner, Kathy Thompson, Kelly Ruth, Marcy Rehse, Carol Garrett, Carrie Cruce, Lana Evans, Kathy Pire-Benton, Patricia Hatfill, and Beth Urbanczyk worked directly with KP at some point, over the past two years; each in a professional, educational role. Within this latter group, most also possessed expert credentials which were helpful and were weighed as such by the Court. Within each group was at least one parent of a special needs child.

Petitioners' counsel, Sherry Wilds, presented the Court with a list of allegations and violations committed by Respondent, Metro: 1) KP has unique needs, but needs can be met within the regular first grade class in the least restrictive environment with reasonable modifications; 2) Despite the lack of an appropriate functional behavioral assessment and behavior intervention plan until just prior to the hearing, KP learned to read, learned to do math problems and made educational progress; 3) KP was making progress beyond the academic realm, that there is no logic to moving her out of her classroom, just when a good behavior intervention plan has been developed; 4) Since kindergarten CP has asked for functional behavior, behavior intervention plan that was appropriate and just recently received one; 5) KP's typical behaviors are not self-injurious or a risk to others; 6) She mimics behaviors of others, even if the behaviors are self-injurious or a risk to others; 7) CP requested that concerns of Metro about getting KP ready to transition to first grade be addressed early in the spring of 2004 and then into the extended school year; 8) Metro did not offer an appropriate program to

address the transition needs with a good functional behavior analysis and behavior intervention plan in place as was promised; 9) CP gave notice she would be requesting reimbursement for services for autism consultant Marcie Rehse for the summer program to allow Ms Rehse to then help her transition to first grade by the first day of school; 10) CP requested an Independent Education Evaluation to obtain KP's current levels; 11) Metro has attempted to place KP in an established program for children with autism, out of her school of zone without a good faith effort to keep her in a familiar environment with her typical peers; 12) Metro presented Petitioners with an IEP that consisted primarily of her day in a seated class, allowing her to go to specials, such as art, music and PE; 13) CP felt the placement offered by Metro was harmful for KP; 14) KP would be best served in a first grade class with some basic supports for her and her teacher and her aide; 15) To uproot KP, for any amount of time, in a self-contained class for children with autism, would likely be harmful and inappropriate; 16) Although her behavior is distracting, it is improving; 17) A Behavior Intervention Plan was never fashioned so that an aide or teacher could easily refer to and implement an organized strategy; 18) KP should be placed as a first grader in her school zone in the least restrictive environment in Metro.

Metro's position presented by Mary Johnston was, very briefly, that Metro had provided a free appropriate public education, or FAPE. Metro had provided an incredible amount of support during KP's kindergarten year, including people of various professions and skills, materials of an array of assortment, outside support, and yet there was little gain academically or behaviorally. During the present year there was again all those supports and still little gain. The ESY program offered provided FAPE for her at that time in her development. An expert evaluation and assessment were done and were both appropriate by the school system. Metro's

position was that the child needs communication behavior intervention program or CBIP, with classroom inclusion. Metro alleged that the parents were trying to make a general education classroom into a special education classroom. Metro's position as to reimbursement requests was that the parents are not entitled due to Metro's compliance with the requirements of FAPE.

KP was a six year old girl attending the first grade at Una Elementary School in Nashville, TN at the time of this hearing. Her stay put educational placement at the beginning of the 2004-2005 school year was in the regular education classroom, with special education support. KP was certified for special education services with a diagnosis of autism in March, 2002.

TESTIMONY OF WITNESSES

CP, KP's mother testified that KP is very bright, very capable. KP has twin siblings who are two years older than she. When asked to explain behavior problems in public, CP believes that behaviors to KP are not a problem. The behaviors are a problem to the people who are around her, and a problem to "us". If KP doesn't want to leave, give her a few times to remind her it's time to leave, give her time to process the information. Then she's offered a few rewards. Mom has had to say "K, either you make a decision or we're going to help you, and we'll go one, two, three and we'll help you. And usually by that time, by the time two or two and a half comes around, for the most part, she will make a decision to follow the directions."

Mom introduced the costs for hiring Marcy Rehse for the '04 summer and the costs for obtaining the Judevine Report and asked for reimbursement from Metro. Mom wanted KP to be in a regular education class. Her opinion of KP's abilities was higher than that of any of the school personnel or experts who testified at the hearing. She believed KP could multitask,

comprehend reading materials and interact with and mimic the actions of other children. She truly believed her child should be placed in the regular education first grade at the local zoned school. Mom believed that to move KP to another school or into the proposed CBIP placement would harm her.

Mom appeared to be agitated with the school system personnel. Several incidents between her and various support staff and other team members were revealed during the course of this hearing. Mom also appeared to want all the other team members to agree with her desires and decisions, regardless of their true opinions. Through her testimony mom gave the Court the impression that she was not open to being a team member; rather she wanted to direct the child's education. Mom took the stand to testify throughout these hearing dates on three different occasions.

Janet Shouse, a parent of a child with autism, testified for the parents. Her testimony included generalities about children with autism and how she was able to support other families in need. She was affiliated with autism societies and offered first hand experience as being a parent of a child with autism in elementary school. Her son attended the third grade in a regular education classroom in Williamson County, TN. She defined a meltdown as looking like a seven or eight or eleven year old having a giant temper tantrum. They may fling themselves on the floor and scream and kick. They may holler and head-butt someone. It's a frustration usually born out of the inability to communicate their needs or wants.

Elizabeth Mitchell, another parent of a nine year old child with autism, testified for the parents. She was familiar with K's behavior plan in effect during kindergarten. She thought it was too generalized, not child specific. She had attended IEP team meetings with CP and did not

believe KP should be placed in CBIP class. Her son was placed at West Meade elementary with a general education/enhanced resource program, which was successful for him. Her son received services with Beth Urbanczyk for nine hours a week.

KP's first educational program was with other children with autism at Berry Elementary, about two months before the 2001-2002 school year ended. That experience was successful. Next, she went to Caldwell Elementary for summer before preschool, with children with autism. That experience was successful. KP then attended preschool at Winsett Elementary School in a classroom with children with all different disabilities. During preschool, Mom noticed that KP began having behavior difficulties. She was having difficulty sitting in circle time and paying attention. Mom asked for a Functional Behavior Analysis. An IEP meeting convened at the preschool year end.

KP was enrolled in regular education kindergarten class. Mom wanted her to go to her zoned school. KP was assigned to one kindergarten classroom and moved to another classroom within five weeks of the beginning of the school year. The first classroom environment was too stimulating for KP. Mom realized KP had behavior issues and that they needed to be targeted at an early age. She requested a Functional Behavior Assessment and was not pleased with what she received.

Patricia Hatfill was the second kindergarten teacher assigned to KP. Kathy Thompson was the itinerant teacher assigned to work with KP in this class. Kathy Thompson's roll was as a case manager. She was there to support the child in the classroom setting, train the teacher and assistant teacher, provide whatever materials the child needed, and to be as supportive as possible to the personnel working with KP. Angie Gleaves was Ms. Hatfill's teaching assistant.

Kelly Ruth was the Speech and Language Pathologist at Una School and for KP. KP received additional services from occupational therapy and behavioral support staff.

The team modified the classroom for KP by placing a desk close to the circle time rug so KP could learn without having to be fully seated at circle time with the other children. They used visual schedules or organizers, pictures that told KP what activities and changes were going to occur so she could prepare for change. They made a visual timer that showed KP how much time she had for each task or activity. They wrote social stories for KP to help her with transition from one activity to another. Multiple types of verbal and visual supports were used with KP. When KP resisted participating in specials, such as music or PE, they brought the activity outside the classroom to try to get her involved with the other children.

KP did not like having her desk placed close to circle time; she resisted. She did not like going to the music room; she fell on the floor, screamed, said “no, no”. At times the music teacher would have no choice but to close the door, leaving KP and her assistant in the hall. The ultimate goal of the team during the kindergarten year was to get KP into the music classroom, even if she wasn’t participating in the same activity.

Report card assessment was difficult with KP. Team members tried assessing KP in a calmer setting than the classroom. They discovered that she performed better in the language center classroom where it was quieter and where there weren’t any other children and no distractions. The team modified KP’s curriculum. She was allowed to use manipulatives during math assessment; the other children were not. Reading comprehension assessment was modified so that KP could actually receive visual hints as to the answers to the questions asked; the other children answered from memory. Reading comprehension was not achieved, in spite of the

modifications.

KP's behavior seemed to hold her back from making progress in the kindergarten curriculum. Her behavior was non-compliant. She would knock materials to the floor, say no; get up and leave her desk or a table and run around the room, fall to the floor, crying, vocalizing, no, no.

Hatfill, the kindergarten teacher, testified that the team made small gains. KP allowed peers to put lunch tags on her a couple of times; she came to the carpet some and shook hands during calendar songs a couple of times; sometimes Hatfill caught KP watching her reading a story to the children (thinking that KP was hearing and learning, or at least enjoying the book); she could memorize; she attended some. However, according to Hatfill, KP was not applying the information she was learning.

With all the support services and staff, KP did not progress as well as a child in kindergarten was expected to do. Socialization was not very spontaneous from the classmates, even though they were encouraged to interact with KP. The classroom personnel had a behavior plan in effect; that did not work. The team had a written plan, they met and talked about the plan.

The written behavior plan was developed by Paulette Gentry. The greatest behavior issue was non-compliance. Everyone working with KP had access to the plan and they met monthly to discuss the plan and modify it as needed. Additional Functional Behavior Analysis and Behavior Intervention Plans were developed for KP. One was created during KP's preschool year by Cindy Ragan Martin, another itinerant teacher familiar with KP's behavior issues; that document was contained in the school notebook for preschool and kindergarten years. Kathy

Thompson developed a set in September, 2003.

The team addressed KP's sensory needs. They brought in sensory equipment and set up a calming room so she could take breaks. She had a beanbag chair, a seat cushion, a vibrating chair pad. A sensory brushing program was implemented and the assistant was trained to administer the brushing therapy. She was allowed to take naps. Hatfill emptied a storage closet for KP to use as a calming area. A large refrigerator or dishwasher box was brought in and she had a weighted blanket, supplied by occupational therapy. Hatfill testified that they (she and her teaching assistant) could not remove KP from the room due to both having to carry her and leave the rest of the class alone. This usually occurred after what the witnesses referred to as "melt down" or KP's behavior incidents. These incidents were described as falling in the floor and screaming. The scream was loud and shrill.

By the last six weeks of kindergarten, KP had stopped working with the team so much and was not attending in small group or one-on-one and was falling frequently (having a melt down). She behaved the same during testing. KP was out with illness, she didn't always come if the teaching assistant was absent, she was just being pulled out (her mother was keeping her at home) and wasn't coming at all because of a disagreement at the end of the year. After spring break (the last six weeks) the calming box was discontinued at the parents' request. The team stopped making demands of KP.

Some incidents occurred at school that caused the team to have a "melt down". Two separate incidents occurred in which, it seemed, the team members directly involved were simply attempting to care for KP's personal needs and were accused of invading the child's privacy. The parents were offended and the team's efforts in the classroom were compromised. Two of

the teaching staff were not allowed to be alone with the child, although they previously were not so restricted to do their jobs. One such staff member was the teaching assistant. As a result, KP's mom was ever present in the classroom, as were other people, due to the disagreements. Hatfill testified that she believed this negativity adversely affected KP's progress.

The team met monthly, at least, to discuss the behavior intervention plan and to modify as necessary. Hatfill took notes and kept the teaching assistant informed of changes. She made the changes on her plan and would call Paulette Gentry, the plan's author, or Donna Zeeder, occupational therapist, or Kathy Pire-Benton if she needed further assistance or clarification. The support members of the team brought new assistive devices in constantly to try new methods for calming.

The team discussed diet at the monthly meetings, to make sure she wasn't straying from her gluten-free, casein-free diet. Mom believed that controlling the diet could control the behaviors. Pire-Benton addressed occupational therapy concerns. Paulette Gentry assisted with behavioral issues. The meetings lasted fifty-five minutes and were packed full of just discussing ways to help KP succeed. The team even had a plan for getting K to take a nap and one for getting her to get up after a nap. They discussed how to get her from her mom's car into the building and on into the classroom. They discussed eliminating toys that K was bringing to school; they talked about clothes, shoes and coats.

After Christmas break, the kindergarten curriculum environment picked up in pace. Hatfill felt that K withdrew and stopped making gains. After spring break Hatfill saw K go backwards. She was falling out more often. Tensions were building between the parents and the rest of the team over an incident at school. Due to the problem, more people were present in the

room. K began grinding her teeth, falling out more often, going onto the rug and rolling around and removing some of her clothing.

Hatfill observed that KP was very aggravated, tense, non-compliant, by the end of the year. KP wasn't as prevalent and a part of the classroom at the end of the year. After Christmas break, K was wanting more to be in the reading center, doing her view finder, puzzles or games (away from the rest of the class). After spring break, she was either out of class a lot, or she was back in the reading center or at her desk (away from the class). She was not attending to Hatfill's instructions seventy-five to eighty per cent of the time, because so much of it was being directed one-on-one at that point.

Hatfill believed some of the IEP goals were achieved, but as she observed KP's agitation grow, she knew the team was asking more from KP at that stage in her life than she could give. Hatfill observed that KP's behavior incidents were the result of frustration. Hatfill believed that KP initially needed more structure in a smaller environment.

Hatfill described the number of team members working in her classroom. Angela Gleaves was always with KP, as her teaching assistant. Kathy Thompson came in two times per week. Kelly Ruth was in and out, working on speech. Donna Zeeder was in and out, working on occupational therapy skills. Carol Garrett came in for meetings. Paulette Gentry was in, especially if KP was exhibiting behaviors that needed addressing, and for meetings. Kathy Pire-Benton brought in supplies, trained the staff on their usage and came in for meetings. Mrs. P came in, especially at the end of the school year (almost one hundred per cent of the time). Linda Snyder, Donna Zeeder's supervisor, also came in some. Penny Franklin, school principal, came in; more especially toward the end of the school year.

Hatfill agreed with the May 6, 2004 IEP ESY goals. They included parent training consultation, three visits during ESY, direct special education and related other services or communication and occupational therapy two times per week, two to three visits during the ESY program, to take place all things in the school building. The team believed the ESY program was needed because K had regressed after the two week Christmas break, again after the one week spring break and then after being held out of school at the year end by her mom. KP had not reached the point of passing into the first grade.

Hatfill strongly agreed with the team placement recommendations for the 2004-2005 school year which was in the CBIP classroom. Her desire for KP was to be successful. Hatfill believed her kindergarten classroom had too many students to meet KP's needs. It was very stimulating, primary colors, very bright and very full. KP needed something simpler; not so overwhelming to her.

Kathy Thompson was dually certified to teach early education and special education. She had nearly twenty years of experience working with children with autism; ten of these years were in a CBIP classroom. She was a member of the 2004-2005 IEP team and believed both the ESY and 2004-2005 school year IEPs and the placement recommendation were appropriate for KP. She was familiar with the FBA and crisis intervention plans drawn by Paulette Garrett and relied upon by the team and believed these were appropriate.

Kelly Ruth, speech therapist during K's kindergarten year, held a bachelor's degree in speech and hearing with minors in special education and psychology. She held a master's degree in speech pathology and had acquired 30 hours beyond her master's in education. She had six years experience teaching special education classes. During Ruth's year with KP, mom broke

off speech services for approximately one month during September and October, 2004. Mom had accused Ruth of pinching and pulling KP's hair as a form of behavior modification. Ruth's testimony indicated that she tried to discuss the allegations with mom, after the services were stopped and mom refused during the month K missed her speech classes. After the speech classes resumed, Ruth insisted that another adult be present while she was with the child, usually Angie Gleaves.

Kelly Ruth had occasion to work directly with KP in several different environments. She worked with her in the speech and language laboratory (or lab), in the classroom and in the hallway. Ruth noticed K's behavior was less drastic in the lab than in the hallway or the classroom. In the lab inappropriate behavior consisted of KP falling out in the floor. In the classroom Ruth saw KP running around the room, screaming, throwing, kicking; just more extreme behavior and more frequent behavior. In the hallway, she would become very loud, fall on the floor, scream, and try to escape from a situation by pushing her body away. On one occasion, KP was on the floor in front of the cafeteria screaming at the same time children were trying to enter the cafeteria. Ruth and Gleaves had to block the children physically from stepping on KP, who was unaware of her dangerous situation.

Ruth had more difficulty redirecting K after a meltdown in the classroom or hallway than in the lab. It was harder to get her to calm down. KP was better able to process information in the lab. The lab was a smaller, calmer, quieter setting. She believed the summer '04 ESY and 2004-2005 IEPs were appropriate and KP would benefit from the recommendations and the proposed placement.

Carol Garrett was called to testify for metro and qualified as expert in educating children

with autism. She held a master's degree in special education, many hours of training in the field of autism, had taught special education classes and administered programs for children with special needs, including autism. During KP's kindergarten year she was special education coordinator for Metro schools. Part of her duties included putting together the team of support staff who worked with KP. She was a member of the IEP team. Garrett knew the team members' qualifications, had worked with many of them in the past and chose them because of their experience and knowledge of autism. She specifically chose Gleaves to work with KP because Gleaves had training in autism and experience working with children with autism.

Garrett brought in Lynette White, the program's certified behavior specialist (certified in applied behavior analysis) to observe. She brought in Paulette Gentry to perform a functional behavior analysis and develop a positive intervention plan. Kathy Pire-Benton was enlisted, who, along with Linda Snyder, registered occupational therapist, developed some strategies for sensory issues. Cynthia Ragan Martin came over from Winsett elementary to assist with transition of the preschool behavior intervention plan to the one developed by Paulette Gentry. She described the staff put together to support KP as very high quality, excellent. All have years of experience and have worked with students that have mild to moderate to severe characteristics of autism.

Garrett was very familiar with and confident in the FBA and BIP that were used for KP by the team. She explained the plan and how the team used it.

Garrett was very familiar with KP's case and related the main events of KP's kindergarten year to the Court: meetings, letters, concerns of various people, misunderstandings between the parents and other team members, the FBA and BIP. She described KP's abilities,

behaviors, issues, and her belief that KP could become successfully included. First the behaviors had to be modified. She categorized KP's behavior as "significant, severe behavior, not aggressive but severe, rigid, non-compliant--absolutely refusing an adult" Garrett's concerns and hopes for the child's program were strong. She was a team member and felt very confident that the ESP IEP for summer '04 and the 2004-2005 school year IEP were appropriate and provided a free appropriate public education.

Kathy Pire-Benton testified on behalf of Metro. She held a bachelor's degree in occupational therapy, a master's degree in public administration, board certification as a pediatric specialist, certification to administer and interpret the Sensory Integration Practice Test and had taken the eight week course for neuro-developmental therapy. She presented numerous qualifications to testify as an expert in occupational therapy as it relates to children with autism, and a special emphasis on the sensory diet. Pire-Benton was familiar with KP and assisted the Court in understanding sensory diet as it relates to behavior and autism. She was a member of the team and agreed with the summer '04 ESP and 2004-2005 IEP's.

Pire-Benton described her efforts to work with KP, KP's family, the team and others to provide KP sensory and occupational support. She related the events of the kindergarten year and her work with KP in the classroom. She worked with all other support members, the teacher and teaching assistant, the family and the entire team. She supplied items to use for a sensory diet which she developed. She trained and assisted the teaching assistant in the use of the sensory devices, and consulted with other members of the team as needed. She attended the monthly meetings and conferred with the other members about KP's program and any needs that might arise. She believed KP could be successful, but that she needed the CBIP classroom first.

Marcy Rehse was called to testify for the parents. She was the owner of a private consulting business called Tennessee Autism Consulting and Therapy or TACT. She held a bachelor's degree in elementary education and a master's in early education, special education. She currently provided services to children on the autism spectrum, called autism therapy. She had ten years experience working with children with autism. She was not a certified behavior analyst.

Rehse was hired by the parents to observe KP in school because mom didn't feel the school system was providing enough support in the classroom and some things weren't going well for the child. She observed KP on October 27, 2003, where she encountered Angie Gleaves, K's teaching assistant. Gleaves asked her questions about what to do with KP, how to handle situations, etc. Rehse didn't feel that her job was to add or give information, but to observe, but tried to help Gleaves. She felt Gleaves needed more training. She observed again on November 12, 2003.

Rehse had worked during summer'04 at the request and hiring by parents to help KP transition to first grade. She developed and submitted a written report to the parents which contained her comments and goals for KP. Rehse did not review any of KP's IEP's. The TACT report contained many of same ideas and goals as KP's IEP goals for ESY and 2004-2005 school year. Rehse's belief that KP did not need CBIP class was primarily because she had imitated another child hitting the wall with his hand.

Jennifer Haughey testified for the parents. Mr and Mrs. P hired the Judevine Center, in St. Louis, MO, to perform an independent assessment on KP. Haughey introduced the report to the Court and described the circumstances surrounding the assessment, data/information

gathering, assessment tools used, the child's demeanor and actions and, finally, the Center's findings and recommendations. The Center found that K falls in the middle of the scale on a CARS rating scale (CARS is Childhood Autism Rating Scale), or, she was found to be in the mildly-moderately autistic range of the spectrum. The Center assessed K, based mostly on mom's information and a brief observation of the child. Recommendations included: communication/language therapy; regular and consistent opportunities for inclusion; a sensory integration assessment; a music therapy assessment; individual behavior therapy/social skills teaching; modified curriculum; predictability and choices throughout her day; and a thorough functional behavior analysis and a positive behavior development plan.

Dr. Denise Dunzweiler, a professor at Southern Adventist University, School of Education and Psychology, teaching undergraduate education courses and a master's level course in inclusive education, was called as an expert witness for the parents. Dr. Dunzweiler's background included a master's degree in special education; administrative credentials; and credentials to teach K through 12 special needs children, severely emotionally disturbed, communicationally handicapped and learning disabled. She received a PhD in leadership with an emphasis in inclusive education from Andrews University in Michigan.

Dr. Dunzweiler became a special education teacher because she had a son with a disability. She received her master's degree so she could influence teachers to mainstream. Her previous jobs included regular education teacher and special education administrator in various principal-type roles.

She testified for thirty minutes during this hearing, regarding her expertise, without ever mentioning the word "autism". Dunzweiler was specifically challenged by Metro as an expert

on the subject of autism, she stated she had worked in a segregated facility where probably fifteen children with autism between the ages of three to twenty-one resided. These children had to be dealt with heavily behaviorally. She had an experience as a special education teacher where she taught two children with autism for two or three years. Her testimony revealed that she “did a lot of data control, and a lot of behavior stuff because we-because we had to. There was not a choice.” Dr. Dunzweiler’s experience with children with autism was limited, at least. Her testimony upon direct question was “my experience, my personal experience, has been two in my classroom. Dr. Dunzweiler was marginally qualified as an expert on the subject of autism.

Dunzweiler’s personal experience with KP was the week before her testimony. She had to read her observations from notes. It was noted that, when given direction to go get her lunch box more than once by the classroom teacher and KP’s assistant, KP was “totally not interested” in getting her lunch box. Confusion developed when a classmate got K’s lunch box and took it to her. The teacher advised the student to put the lunch box back and the assistant advised K to take the lunch box. The student eventually complied with the teacher and the assistant eventually got K to go get her lunch box. During lunch, K sat across from her assistant, with two boys sitting beside the assistant. K ate a few bites of her lunch, staring about blankly, then started talking. She got up and walked away from the assistant and began crying and yelling “no” for approximately a minute. The crying subsided and resumed each time the assistant gave K direction. They left lunch early.

Dunzweiler’s observations back in the classroom included that K did not participate in the classroom interaction when called upon by the teacher. She commented that the effort

observed to get K from one math activity to circle time on the rug as “a hard thing to get to happen” Once at the rug, K did briefly interact with the activity, but did not complete it. Instead, she needed a break. Another incident of noncompliance between K and her teacher was observed, which was followed by K taking another break. K worked on the same activities as the rest of the class, just not with them and her work looked no different than anyone else’s work.

Dunzweiler saw that K did not interact in any way with her classmates, K’s leaving the work area without the assistant could pose a danger to K, there were gaps between when everyone else finished their work and K finished her work when she was given a direction with which she did not want to comply, she needed many breaks.

Dunzweiler reviewed the Judevine Report and agreed with the recommendations.

Dr. Craig Kennedy was called as an expert witness by Metro and was qualified to testify regarding special education, instruction, the education of children with autism and the inclusion of children with autism in an educational setting. Dr. Kennedy is a board certified behavior analyst. As such, he was trained and served an internship in behavior analysis, has an advanced degree relating to behavior analysis, has passed a qualifying board examination and continues to receive education to maintain the knowledge of the field. He related that his behavior analysis certification assists him in his work with children with autism because most of the work in terms of assessment and intervention for children with autism has been around the area of behavior analysis. He was the currently the director of Vanderbilt Kennedy Behavior Analysis Clinic. The clinic was conducting research on inclusion of children within Williamson County, TN schools.

Kennedy reviewed K's IEPs, the reports generated by Judevine and TACT, Bill Wilkerson Center performance notes and a functional behavior analysis interview conducted by the Vanderbilt Kennedy Behavior Analysis Clinic, of which he is the director. He read other witnesses' discovery depositions taken prior to his testimony in this case. The functional behavior assessment conducted at Vanderbilt included an interview with K's mother; observation of Una elementary school and an interview with K's kindergarten teacher; observation of K in the first grade classroom; observation of Hickman elementary school, two CBIP classrooms there and a meeting with the teachers. In addition, Dr. Kennedy had prior experience with the Hickman CBIP classrooms through his clinic's research efforts in and observations of the classrooms, on and off, over the previous two or three years.

The interview with CP revealed that she wanted to be full time in a first grade class. She wanted K to work on academic issues, and at the same time achieve her socialization goals with students without disabilities.

Kennedy described the functional behavior assessment interview as the "process whereby care providers and/or teachers are asked about the behaviors of concern that a child is emitting, the types of reinforcers that they enjoy, the context in which the behavior problems occur and they don't occur, possible reasons why they might be occurring and any current intervention strategies that the teachers or parents might be using with the child." The goal is to try to identify the behaviors and their cause.

The Clinic recommended the best placement for K, at the time of the assessment, was being in Ms. Gillespie's CBIP classroom at Hickman elementary. That setting would provide a balance of her mom's desire for her inclusion while receiving some intensive academic

instruction in the classroom that had skills for kids with her type of disability. In that classroom there were visual schedules; the teaching staff was quite adept at working with children with autism on a one-on-one, in small group instruction, around academic issues. There was clearly a knowledge of behavior management, behavior support strategies, being implemented for the students. A number of the students were being included in regular education classrooms.

The teacher had comprehensive licensure¹ in Tennessee, had taught children with autism, was observed using best practices with students with autism and supervising para-professionals in her classroom. She had a student from Belmont University doing his practicum in her classroom. The para-professionals had been trained in autism and were taking direction from the teacher.

Dr. Kennedy reviewed the 10/29/04 FBA and Support Plan dated 11/8/04. His opinion was that the FBA was very accurate in terms of K's behavior support needs and the Behavior Support Plan actually made a great deal of sense. He believed it would be pretty successful for KP. The individual implementing the Behavior Support Plan would need supervision from a licensed teacher, probably who has comprehensive certification in TN. A teacher certified in general education would need training and supervision from a certified comprehensive teacher or behavior specialist.

Kennedy's opinion was that K needed one-on-one instruction from an adult. Peers could participate in such instruction but could not lead it themselves. That would need to come from a

¹Dr. Kennedy defined comprehensive licensure certification in TN as meaning that an individual is trained in severe disabilities, developmental disabilities and these type of behavioral support strategies.

para-professional who's had training in autism, either through TRIAD² or some other source of expertise and had worked with children with autism. The para-professional would need supervision from an onsite teacher who has certification and comprehensive licensure or has expertise in autism.

He described the conditions under which K needed to be taught. She needed to be taught a new skill by first presenting her a choice of rewards she wanted to work toward, clearly defining the work to be done, prompting her through the work and providing her with the reward. She should be provided a very small amount of work on new skills, giving her a better chance of success and allowing her to receive her reward, with praise for a good job and reminding her that she will come back to the task later to do some more work on the task or skill. She needed instruction from someone trained in content knowledge on the strengths and needs of children with autism, developmental discrepancies characteristic of children with autism, and the types of systematic instruction techniques for children with autism, particularly with visual schedules, rewards, systematic prompting and behavior support plans. K was considered to be very dependent upon these supports. She wanted to get out of certain tasks and get access to other tasks, and she needed a fairly sophisticated qualified person working with her to be able to help her work on tasks she didn't want to do, and to guide her through her work day.

Dr. Kennedy opined that children with autism are not learning by watching other people

²TRIAD is the Treatment and Resource Institute for Autism Spectrum Disorder. The TN Department of Education contracts with TRIAD to train other professionals to work with children with autism across the State of TN.

do things in their environment; they're learning through direct feedback. Children with autism do not learn by watching other children do something, experience a positive or negative consequence from it and then imitate that themselves. Rather, they often have to be prompted through that and taught on their own, or they learn through their own experiences, those types of consequences. Children with autism tend to learn a fairly fixed way of going through a routine and transitions are difficult. Once the child has learned to do something in a certain way, it can be challenging to get them to try to accomplish the task another way. They need consistency. He explained that KP seemed to learn by either experiencing consequences of her actions, positive or negative or she could be prompted through an activity and then receive a reward for doing a good job. When asked his conclusion about KP observing another child with autism run into the wall and then imitate that action, Kennedy's reply was that she would potentially imitate problem behaviors of other children, whether they have autism or not, she may very well imitate behavioral problems if she understands that the consequence is something that she might want.

Kennedy reviewed the FBA and BIP drawn by Paulette Gentry. He described the documents as sketchy to someone such as himself. On further examination, though, he thought these documents could be effective if the people using them understood the contents and met to discuss them, as various team members have testified. He recommended against making written modifications to a plan every time a new behavior surfaced. He thought the plan being used in the sense the teachers that were and their working with the P's, probably made sense for them at that time, that was a fairly reasonable thing to do. They were bringing in the resource teacher and they were trying different strategies, some of which had been recommended by a couple of different people over different points in time.

When asked his assessment of the efforts made by the school system to support K in her kindergarten year, Kennedy replied that the school system made a number of efforts using resources that were available at that school to come up with a behavioral assessment and intervention program that would be successful for K. It seemed like they were very much trying to incorporate parental feedback and perspectives into those support plans. He suggested the team needed a behavioral specialist once the behavioral problems were fairly disruptive.

Dr. Kennedy was not so optimistic when asked to comment on the appropriateness of the then-current placement. KP needed a qualified, licensed comprehensive education, or special education teacher, at least in a supporting role within the physical location of the school. She needed a para-professional trained in autism. But first, she needed to have her behavior shaped so that she could be conducive to attending to and completing school work.

Susan Cortner, K's first grade school teacher, testified for the school system. She was a first grade school teacher for thirteen years. Prior to that she was a special education teacher. Her classroom student population, at the time she had K, was lower than usual, and lower than the other classes.

K could not be assessed in reading comprehension during the first six weeks of the first grade because of her non compliant behaviors. Cortner tried, at different times, to test K but K didn't want to take the tests. Cortner attempted to test K at least weekly.

Although a list of eight or so modifications were made within the classroom to help K succeed more, she still required lengthened time on just about every assignment, one-on-one assistance always, a lot of breaks all day and a reward after every task.. She related the needed modifications in KP's program with a loss of instruction time, less learning, less work

completed. Cortner pointed out that, in the process of getting the behavior under control, the losses occur and the second six weeks grades were therefore lower.

Cortner observed that the less instructional time, due to the breaks, had impacted negatively on KP's ability to learn. Urbanczyk's presence in the week were helpful, but when Urbanczyk was not present, K reverted back to inappropriate behaviors that Cortner and the teaching assistant could not divert.

K's behavior in the classroom had gotten so disruptive that they had to turn a conference room into a break room for K. This was occurring several times per day. The breaks caused her to miss class time and she wasn't making up for the time lost in the class room. The work on the behaviors was taking K out of the classroom more; therefore the academic subjects, the learning was decreasing. She wasn't participating in any of her specials: art, music or physical education. K had difficulty staying on one task; the rest of the class were working on two or three tasks.

K was not socializing at all in the first grade. The children spoke to K, but she did not respond. Cortner had K placed in a group of four students for some classroom activity and never saw her speak to any member of the group, or do anything with them. On less that a handful of occasions, Cortner had observed K approach the group, but only on her terms and only for a while, then she would return to her own space. K did not imitate her peers in class; she was not learning from them.

KP's stay put IEP was designed for a kindergarten inclusion classroom and Cortner was neither a kindergarten inclusion teacher nor a first grade inclusion class. Because of this fact Cortner was having difficulty with the IEP. She and the then current speech therapist were not members of the team that developed the IEP.

Most of the progress shown on KP's report card were from her speech and language goals. Most of the work on the goals was in the speech therapy lab. Those sessions included the teacher and occasionally one other student.

K posed a threat to herself and others when the school fire drills occurred. Once, Cortner and the teaching assistant had to carry her out of the building and she flopped down in the middle of the driveway. They had to pick her up and move her. On another occasion, they got her out of the building but couldn't get her past the point designated for the fire drill, past the physical building. Once out of the building, K screamed and ran toward the street. It took three adults to catch her. Cortner had trouble with KP running out of the room. Also the breaks allowed her more frequent opportunity to run.

Cortner had knowledge of the CBIP classroom programming and opined that it would benefit KP. The priority at the time of Cortner's testimony was to get K's behavior under control. She believed K would be better served in a classroom that works with behavior and academics and could get her where she needed to be academically.

Carrie Cruce was called to testify for Metro. She held a bachelor's degree in early childhood education and a master's degree in speech language pathology and received certification and licensure as a speech language pathologist. She was serving as a speech language pathologist under contract with Metro. She was qualified by the Court to testify as an expert in speech language pathologist and as working with children with autism in that field. Cruce was K' first grade speech therapist and was familiar with and working on the IEP goals and recommendations.

Cruce described her work with KP over the preceding few months. She gave the opinion

that KP had a significant delay in her ability to express and understand language. Cruce's opinion regarding placement for KP, at that time, was that she needed a structured, small, quiet environment with one-one-one instruction and access to non-disabled peers.

Lana Evans was called to testify for Metro. Evans was KP's 2004-2005 teaching assistant. She described the then-current activities occurring in KP's education. KP's behavior was disruptive. She walked around the room laughing, attempted to escape the room, hit a child, slammed a door on her own hand and injured herself, kicked Evans, hurt her elbow, hit her head on the desk. KP ran around inside the school building. Her screaming caused stress on the other children and her behavior generally interfered with teaching the other class members. Some behavior required both her and Cortner's attention. She observed KP was happy as long as she was allowed to do what she preferred and worked better in a quiet room with no distractions. Her testimony was documented by her class notes and data collection. She observed that KP's behavior had improved with Beth Urbanczyk's intervention and that KP needed to work on her behavior, then her academics.

Beth Urbanczyk was qualified by Metro as a speech language pathologist and a behavior specialist in children with neurological disorders, which includes autism. Urbanczyk explained the children with such behavior issues as KP do so because it's a function of communication. KP uses her behaviors as a way to communicate and the professionals have to figure out how KP communicates through those behaviors in order to help her work. She had been working as a consultant with Metro for eight years. She was familiar with Metro schools and teaching staff and typically worked with children exhibiting behavioral challenges.

Urbanczyk began working with KP, at Metro's request, for approximately six weeks

prior to the hearing. She spent between ten and fifteen hours a week, in blocks of time, with KP. Urbanczyk documented K's behavior so that she could tell what the behavior is like during a given time of day. She interviewed various members of the team currently working with KP in order to get their representative views. After reviewing the last two IEP's, interviewing team members and observing KP in the classroom, Urbanczyk opined that the team's primary concern should be to decrease the behaviors that were interfering in the classroom and school environment.

Urbanczyk's primary behavioral concerns with KP were screaming in the classroom or hallway, and running away, especially in the hallway, because of her fear that KP could get lost or run out a door and get hurt, or run into somebody. Another behavior of concern was her laying on the floor in the hallway; she would suddenly stop and lay down on her back. She might or might not roll from her back to her stomach and she might or might not kick her legs. These behaviors were targeted by Urbanczyk because she believed them really to be potential health and safety risks for KP.

Urbanczyk developed a functional behavior assessment of KP's behaviors. She described a functional behavior assessment as a tool or set of processes for defining the events in an environment that reliably predict and maintain problem behavior. The object of the functional behavior analysis is to teach effective alternatives. Urbanczyk then developed a behavior support plan to alter patterns of problem behavior, to help KP with her behavior.

Urbanczyk noted some improvement in KP's behaviors, along with lower expectations in school work. She noted that KP's behaviors escalated once Urbanczyk tried to push academics. KP was learning to follow rules and to take breaks when she felt overwhelmed. According to

Urbanczyk, KP needed many different kinds of breaks throughout the day and she needed to be able to recognize when and what type of break she needed to take. Urbanczyk opined that KP was not receiving the education that she required, even though the first grade teacher and her assistant were truly trying. KP was not currently getting the support that she needed in the general education first grade classroom at Una elementary.

Urbanczyk agreed with the 2004-2005 IEP team placement recommendations. She was familiar with the alternative placements and the staff available at each. She disagreed with the proposal that KP be placed at the enhanced resource program at West Meade elementary school.

This placement did not offer KP the skills that she needed at that time. KP needed the someone who knows the disability of autism that understood the social components, that understood the behavioral components, and that could set the occasion within the school to support K. She needed language supports; someone who could take the language from the therapy room into the classroom, into the cafeteria. She needed a skilled teacher in terms of being able to really work with K and do some of the things Urbanczyk was doing. Her desire was to get KP the behavioral training and supports so that she could be able to learn in an inclusive environment. KP needed the structure and environmental make up of the CBIP classroom. First KP's behavior needed to be shaped for learning. This opinion was based upon recent observation and direct one-on-one work with KP. KP needed to be placed in the CBIP classroom in order to obtain skills needed for successful inclusion later in school.

Urbanczyk reviewed the behavior intervention plan developed by Paulette Gentry and agreed that the 2004-2004 team had, in fact, developed a behavior plan. She opined that it was appropriate to use the previous plan before moving to the more clinical support plan which she

had recently developed. She explained the difference in detail as being an individual style, and that if the team members understood the plan and discussed it, it was appropriate for KP's needs. She compared the previous plan to hers, pointing out similarities in the two as far as behaviors, desired goals and methods of achieving success with KP.

Urbanczyk reviewed the Judevine Report, presented during Jennifer Haughey's testimony as the Judevine Center's witness. Urbanczyk reviewed the report page by page and disagreed with many sections of the report. She opined that the information contained in report was not overly helpful to assist KP at school. She noted that the Bill Wilkerson Report, previously performed, gave a much more in-depth look at KP. On cross examination, Jennifer Haughey's testimony discredited to the assessment.

FINDINGS

The Court finds that the parents have not proven the allegations that the school system has failed to provide the child, KP, with a free appropriate public education. The Court finds that, on the other hand, Metro provided a free appropriate public education. Metro inclusively placed the child in the least restrictive environment in her zoned school with more than adequate supports and classroom adaptations, curriculum modifications and assistive devices to offer her a chance at participation in the regular education classroom with typical peers.

The 2004 ESY IEP was appropriate and should have been implemented by the team. The Court finds that the IEP was not implemented because of the child's parents' refusal to cooperate with the team recommendations. The 2004-2005 IEP was appropriate and provided the child with the opportunity to receive a free appropriate public education. It should have been implemented and the child should have received the benefit of the team's efforts and

recommendations, including placement. Again, the Court finds that the IEP was not implemented due to the parents' refusal to cooperate with the team recommendations.

The Court understands that the placement recommendation, from full inclusion to a CBIP classroom could be shocking news to someone who had never thought of the idea and of how parents could react to such recommendations initially. But, these parents had adequate time to recover from the idea that their child would be taking a step backward, instead of forward. The Court also realizes that all children do not always move ever forward; some children go forward and then back and then forward. The Court also realizes that this child needs an opportunity to receive behavior modification that will assist her in attending to classroom instruction and learning and growing academically.

The Court finds that the child was placed in the regular education kindergarten classroom with adequate support to accommodate educational success by KP. The child did not succeed, in spite of the efforts of the IEP team. The team members had the best interests of the child in mind and at heart. The classroom teacher, assistant teacher, school personnel and support team gave the program a good effort.

The Court finds that the child's program included a functional behavior analysis and a behavior intervention plan. The members of the team who testified were familiar with the documents and could use them and felt the plan was adequate for their needs in working with KP's behavior intervention. The Court recognizes that the parents were not pleased with the FBA and BIP.

The Court recognizes the parents as dissenting members of the team, but members of the team. The child's future rests on this team, whatever the year to year make up. The parents will

be there from year to year, other team members will be replaced by new faces, new personalities, and new views. The parents need to learn to work with school professionals, to communicate with them and to listen to others' views and recommendations.

The child needs to communicate, she needs help learning to communicate. Communication is probably our most important socialization tool. Without communication, socialization is less likely to happen. These parents want their child very much to socialize. They want her in the neighborhood school so she can grow up with her peers and be known in the community as KP. If she receives the tools necessary to communicate effectively and to socialize, the inappropriate (or anti-social) behaviors will most likely decrease and the behaviors that allow her progress in academics and socialization will increase.

The team needs to work together and to embrace the parents as members. The team needs to somehow regain the confidence of these parents, who somehow got away from the group. The team members, with the exception of the parents, were all very complimentary of each other and confident in the abilities and knowledge of the others. They supported each other's task or role as a team member, were available to assist each other and willing to go beyond their duty to see this child succeed. They believed in the child and wanted her to reach her maximum potential.

There was a hint that both, the individual team members and the parents gained some semblance of respect for the other and it appeared to the Court that the broken ties between these people are not yet severed. The individuals that testified did not insult the parents, although some members had been accused of wrongdoing. The parents did not insult the individual team members, who they believed may have injured or disrespected their child. There is still a chance

to re-group and reunite in an effort to assure that KP achieves her maximum potential. There is still time; KP is still young.

CONCLUSIONS OF LAW

The *IDEA* entitles a disabled child to a “free appropriate public education” tailored to his disability. 20 USC §§ 1400 (d)(1)(A), 1412 (a)(1)(A); *Cedar Rapids Community School District v. Garrett F ex rel. Charlene F*, 526 U.S. 66, 68, 119 S. Ct. 992, 143 L.Ed.2d 154 (1999), and expresses a strong preference for “mainstreaming” (the statutory term is least restrictive environment,) §1412 (a)(5); *Beth B v. Van Clay*, 282 F3d 493, 497 (7th Cir. 2002), that is for educating the disabled child in classes with non-disabled children rather than in special classes or at home. §1412(a)(5)(A); *Board of Education v. Rowley*, 458 U.S.176, 202-03 and n. 24, 102 S. Ct. 3034, 73 L. Ed.2d 690 (1982)

The written definition of least restrictive environment, is found at *Tennessee Rules, Regulations and Minimum Standards and the Administrative Policies and Procedures Manual of the Division of Special Education of the State Board of Education*, Rule 0520-1-9-01:

- (a) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities; and
- (b) Special classes, separate schooling or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in general education cannot be achieved satisfactorily.

Tennessee law also requires local school systems to provide children with "special education services sufficient to meet the needs and maximize the capabilities of handicapped children." TCA § 49-10-101(a)(1) (1972).

There are two parts to a court’s inquiry in suits brought pursuant to the *IDEA*. First the

court must determine whether the school system has complied with the procedures set forth in the *IDEA*. Second, the test for the court is whether the "the individualized educational program developed through the IEP team is reasonably calculated to enable the child to receive educational benefits." *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07, 102 S. Ct. 3034, 3050-51, 73 L. Ed.2d 690, 712 (1982). According to *Rowley*, in order to satisfy its duty to provide a free appropriate education, "a state must provide personal instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Id.* at 203, 102 S. Ct. at 3049, 73 L. Ed.2d at 710. The educational benefits do not have to maximize a child's potential, but must only offer a "basic floor of opportunity" which will allow the child to progress with his education. *Id.* at 201, 102 S. Ct. at 3048, 73 L. Ed.2d at 708. Parties challenging an IEP have the burden of proving by the preponderance of the evidence that the IEP devised by the school district is inappropriate. *Kings Local School District, Board of Education v. Zelazny*, 325 F3d 724, 729 (6th Cir.2003)

With regard to procedural matters, a court should "strictly review an IEP for procedural compliance," although technical deviations will not render an IEP invalid. *Dong, ex rel. Dong v. Board of Education of the Rochester Community School*, 179 F3d 793, 800 (6th Cir.1999) Only if a procedural violation results in substantive harm, and thus constitutes a denial of FAPE, may relief be granted. *Knable ex rel. Knable v Bexley City School District*, 238 F3d 755, 764 (6th Cir.2001)

Cost is a factor relevant to the disabled child's LRE. This includes disruptive impact on other children when, as in this case, a disability causes antisocial behavior. *Oberti by Oberti v. Board of Education*, 995 F2d 1204, 1217 (3d Cir.1993); *Daniel RR v. State Board of Education*,

874 F2d 1036, 1048-50 (5th Cir.1989) *See Murray by and through Murray v. Montrose County School District RE-1J*, 51 F3d 921, 926-27 n. 10 (10th Cir.1995)

This case is therefore dismissed against the Petitioners.

ENTERED August 25, 2005.

BARBARA A. DEERE
Administrative Law Judge
State of Tennessee, Department of Education

NOTICE

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and exact copy of this Opinion upon Sherry Wilds, Esq., Attorney for Petitioners, XXXXXXXXXXXXXXXX and daughter, KP, via email at sherryw@tpainc.org and upon Mary Johnston, Esq., Attorney for Metropolitan Nashville Public School System via email at Mary.Johnston@legal.Nashville.org this the 26th of August, 2005

Barbara A. Deere